W. Hirst, of the Inner Temple, who gave the world so excellent a translation of Dr. Redlich's *Local Government in England* will again undertake the work of translation and give an equally good rendering in English of the *Principles and Working of English Parliamentary Government.* If Mr. Hirst does undertake this work, there is no doubt that he will add to the value of the book by giving a full and accurate index, instead of the scanty and imperfect one in the German edition. He will also doubtless remove a number of minor blemishes in the misspelling or misrendering of English names and titles—matters perhaps of little consequence, but irritating to the reader familiar with the correct forms.

A. G. PORRITT.

Roman Private Law: Founded on the "Institutes" of Gaius and Justinian. By R. W. LEAGUE, M.A., B.C.L., Fellow of Brasenose College, Oxford. (London: Macmillan and Company; New York: The Macmillan Co. 1906. Pp. ix, 429.)

This volume is the latest contribution to the academic study of the Roman law in England. The author says in his preface that it is an attempt to meet a want which he has felt "in teaching Roman law at Oxford, viz: some book which is content to give as simply as possible the subject-matter of the Institutes of Gaius and Justinian, following, in the main, the original order of treatment." The significance of this book as an educational treatise may perhaps best be indicated by looking at it with reference to two points: first, the extent to which it supplements the expository works already accessible to the English student; and, secondly, the extent to which the highest benefit to be derived from the study of the Roman law can be obtained from such an exposition of the subject-matter of the Institutes of Gaius and Justinian.

When the author assumes that for purposes of elementary study the legal system of the Romans can best be understood by following the order of treatment adopted by their own institutional writers, he is no doubt entirely correct. It would hardly seem necessary to defend such a proposition were it not for the fact that this order of treatment is often ignored. It is of course quite competent to one who so desires, to criticise the order of the Institutes and to suggest another arrangement as being more logical than that of the Roman

writers. But it seems absurd to suppose that the legal principles expounded by the Roman writers can be better understood by recasting them into a form utterly foreign to that employed by the writers themselves.

The whole body of the private law, according to Gaius, relates either to persons or to things, or to actions (*vel ad personas pertinet vel ad res vel ad actiones*), which classification was followed in the Institutes of Justinian. Since the revival of the study of the Roman law, however, there has been a strong disposition to depart from the order laid down in the Institutes. The early Italian "glossators"—whose method involved simply exegetical comments on the text of Justinian, chiefly the Digest—were oblivious to the need of any systematic arrangement; and hence their work, great as it was, left the law in the form of an incoherent mass of hermeneutical fragments. It was the French civilians, with their greater love of system, who first perceived the need of viewing the law as an organic whole. These writers, therefore, attempted to rearrange the whole Justinian law upon some scientific basis, not feeling bound, however, to the order of the Institutes. This tendency, which began with Petrus Ramus and Donellus, reached its culmination in Domat's famous work, *Pandectæ Justinianæ in novum Ordinem Digestæ*. In Germany the study of the Roman law came to be pursued, not so much for expounding the laws of Justinian, as for discovering and systematizing the laws in force in the German states. This exposition of the Romano-Germanic law is embodied in the works known as the *Pandekten*, which adopt with more or less strictness the following conventional order: (1) General principles, (2) law of things, (3) law of obligations, including contracts and delicts, (4) law of the family, (5) law of inheritance. This arrangement has been generally adhered to, even in the German *Institutionen*, which profess to be expositions of the ancient Justinian law.

The disposition in England to depart from the order of Gaius is most conspicuously shown in the great work of Professor Hunter, entitled *A Systematic and Historical Exposition of the Roman Law in the Order of a Code*. Professor Hunter labored with much skill to show that the order of the Roman institutional writers is illogical and unscientific; but it may be a question whether he succeeded in showing that the principles of the law as understood by the Romans can be made more clear to the English student by an arrangement

which deviates materially from that of the Roman writers. Perhaps the strongest influence which has led the recent English civilians to depreciate the value of the Roman classification is due to the somewhat hypercritical and dogmatic analysis of John Austin. For a considerable time Austin held almost the position of dictator in English legal thought. But it has been shown—especially by Dr. Moyle—that Austin's criticisms of the Roman distinction between the "law of persons" and the "law of things" was due either to a misconception or to a perversion of the meaning which the Romans attached to the words "*persona*" and "*res*," as well as to the difficulty which Austin experienced in making the Roman classification square with his own *a priori* scheme. But the essential question is not whether the Roman system can be made to fit into a modern scheme, but whether its principles can or cannot be most clearly understood by considering them with reference to the scheme which the Roman institutional writers themselves adopted. To this question Mr. Leage has no doubt given the correct answer, in deciding to explain the Roman law as the Roman lawyers understood it, and to follow in his exposition the order of treatment given in the Institutes of Gaius and Justinian.

But Mr. Leage is not, of course, the first of English writers to found the study of the Roman law upon the Institutes. As it has been quite customary in England to assume the lack of any important historical connection between the Roman law and the English common law, the study of the Roman system has been generally pursued, not, as in Germany, as a necessary part of a professional training, but as an ornamental feature of a liberal education, like any other branch of antiquarian research. For this purpose the elementary study of the Institutes has usually been found sufficient, without any exhaustive examination of the Digest. Generally speaking, then, the Institutes have furnished, since the eighteenth century, the chief basis of the academic study of the Roman law in England. Passing over such antiquated tomes as those of Taylor, Wood and Harris, it might be noticed that as early as 1774 Prof. Samuel Hallifax, of Cambridge, published his *Elements of the Roman Civil Law*, which was not only founded upon the Institutes of Justinian, but followed the order of that book in its general divisions and in its subordinate analysis. And during the last fifty years—during which time there has been a marked revival of this study—

unusual attention has been paid to the Roman institutional writers. Indeed, it might be said that there are few works in any language that surpass, in lucidity and comprehensive treatment, certain comparatively recent commentaries on the Institutes, for example, Poste's edition of the Institutes of Gaius, as well as Sandars' and especially Moyle's edition of the Institutes of Justinian.

The relative merits of Mr. Leage's book must, therefore, be judged upon other considerations than the fact that it is founded upon the institutional writings of Gaius and Justinian, or that it follows the order of treatment given by these ancient authors. Its publication naturally provokes a comparison with two classes of English books already in the field; the one, a class of systematic treatises, represented by Mackenzie and Hunter (and also Ledlie's translation of Sohm's *Institutionen*), which depart from the order of the Roman text-books; the other, a class of expository works, represented by Poste, Sandars and Moyle, which, being expository, follow explicitly the order of the Institutes. The distinctive merit of Mr. Leage's work lies in the fact that it adopts the best features of these two classes, and avoids those features which are sometimes regarded as objectionable. In other words, it is at the same time a systematic treatise and a faithful exposition of Gaius and Justinian. It is a systematic treatise, without abandoning or affecting to correct the scientific arrangement of the Roman jurists. It is a faithful exposition of the Institutes, without adopting the conventional and constrained form of a commentary. In its structure it is a remarkable example of broad synthetic treatment and also of close analytical and logical arrangement of details. It enables the student to comprehend the Roman private law in its entirety, as it was no doubt conceived by Gaius and the other scientific jurists of the Empire. At the same time, by means of a well-elaborated system of notation it sets forth in a clear and accurate manner the fine distinction made by the jurists in their treatment of special branches of the law. Although the exposition of the law is primarily based upon the Institutes, the author has properly supplemented the treatment of certain topics by an appeal to the Digest, as for example in the case of certain subordinate rights of property, the *emphyteusis*, *superficies*, *pignus*, and *hypotheca*. The style of the book is direct, simple and extremely clear. While the use of Latin technical phrases is abundant, the context generally renders the meaning of

these terms quite apparent. There are very few points discussed by the author to which any serious exceptions might be taken. It might be noticed, however, that when the assertion is made (p. 174) that the "mancipatory" will (*testamentum per æs et libram*) transferred the estate immediately to the heir, that is, before the death of the testator, the writer differs from the majority of authorities, who consider this ancient process as merely a fictitious and conditional conveyance through the forms of "mancipation," to take effect only on the death of the testator. But such disputable points are rare in this treatise. When considered merely as a comprehensive, concise, and clear description of the subject-matter of the Roman Institutes, the book of Mr. Leage will be regarded by all students as an acceptable addition to the literature of this subject.

But there is a larger question suggested by the publication of this work, namely, whether the full educational value to be derived from the study of the Roman law can be obtained from the mere examination, however thorough, of the subject-matter of the Institutes. It is no doubt true that much disciplinary benefit may be received by the prospective lawyer from the training of his mind in the principles set forth in these elementary treatises, especially as embodied in the law of contract. But the greatest significance of the Roman law as a part of an educational curriculum, does not consist in what it may contribute to the professional training of the lawyer. If this were so, its study might better be relegated to the professional school. Moreover, the most liberalizing benefit to be derived from its study cannot be obtained from a mere technical exposition of its subject-matter at the time of Gaius or Justinian, without an examination of that process of development whereby the law of the XII Tables grew into the law of Justinian, and the law of Justinian has become, in its essential principles, a large part of the law of the civilized world. To know what the law *was* at a particular time, is not so important as to know how it *came to be* what it was at each successive period of its growth. The one kind of knowledge is of special interest to the legal antiquary; the other kind of knowledge is of importance to every liberal scholar who would appreciate the full significance of one of the permanent elements of the world's culture. The evolution of the Roman law, from its obscure origin in the customs of the Aryan family and *gens* to its final incorporation into the jurisprudence of modern states, presents one of the most remarkable

examples which history affords of the continuity of institutional life and the normal processes that govern institutional development. At first, bound by a narrow and rigid conservatism and hampered by the bigoted sanctions of a ceremonial religion, this law became inspired with a thoroughly progressive spirit, expanding with the extension of the Roman territory, supplementing strict rules by equitable principles, and culminating in a scientific system based upon natural justice. The most distinctive feature which one observes in this process of institutional growth is the harmonious blending of conservative and progressive tendencies—the preservation of the old with the development of the new. In the whole course of its evolution there was no radical destruction of what already existed in the Roman system. Legal reforms were effected by addition and not by elimination, by interpretation rather than by formal repeal. The old technical and ceremonial law of the patricians remained with all its traditional sanctity, while the rights of the plebeians were becoming recognized and respected. The ancient *ius civile* continued to be the exclusive possession of the citizen, while the new *ius gentium* afforded equitable protection to the subject foreigner. The letter of the law was, generally speaking, suffered to remain intact, while the spirit of the law was continually expanding through juristic interpretation. The conservative sense of the Roman people thus endured no shock, while the progressive tendencies of each age continued to enlarge and enrich the legal system. The specific methods by which this progress was effected through the coexistence of old forms with new ideas— the "duplication" of legal rights and procedure whereby respect was shown both to ancient prejudices and to modern requirements—are often looked upon as "fictitious" and hence as artificial; whereas, in fact, they are most conspicuous examples of the process involved in all normal and rational growth, and were strictly in harmony with the fundamental laws of evolution—the conservation of the accumulated experiences of the past, and the adjustment of life to the new environment and the increasing needs of the present.

From the great significance of the Roman law as an example of normal institutional growth it seems evident that the highest benefit to be derived from its academic study must be obtained, not so much from the mere study of its technical rules, as from the study of the historical principles involved in its development and its adapta-

tion to the needs of a progressive society. It is this consideration which suggests the principal criticism to be made upon Mr. Leage's book. Its great defect lies in the very meager discussion devoted to the historical growth of the Roman law. The few pages of introduction given to the "sources of law" are entirely inadequate to explain the progress of the law from the XII Tables to the codification of Justinian, and scarcely a hint is given in the whole book of the historical relations of the Roman law to modern jurisprudence. It must be apparent to every one who seriously considers the kind of education demanded by modern life that the chief justification of retaining an ancient system of thought in a modern course of liberal studies, is based upon its significance as an element of the world's culture, and must be determined by its permanent relations to modern thought and institutions. If the study of the Roman law should form a part of a liberal education, it is not because it is useful as an aid to professional training, not simply because it was the highest product of the Roman mind, but chiefly for the reason that it is one of the great bequests of antiquity to the modern world and hence is one of the permanent factors of civilization. Its greatest significance is due to its place in universal history; and hence the highest benefit to be derived from its academic study can be obtained only by considering it in its historical relations. It is not enough to say that the study of its history is different from and precludes the study of its subject-matter. On the contrary, there is scarcely an important principle contained in the whole body of the Institutes which can be adequately understood except through its history. It is perhaps due to Mr. Leage to say that the historical method is not entirely ignored in his book, for comparisons are sometimes drawn between the law at the time of Gaius and the law at the time of Justinian; but these are not sufficient to enable the student to understand the successive stages by which the "Law of the Roman City" became the "Law of the World"—as expressed in the significant titles given by Professor Sohm to his chapters on the development of the Roman law.

To this general criticism Mr. Leage may reply that his purpose, as clearly expressed in his preface, was merely "to give as simply as possible the subject-matter of the Institutes of Gaius and Justinian." To this one would be compelled to answer that so far as his expressed purpose is concerned his work has been eminently

successful; but that it is a serious question whether such a purpose is sufficiently broad to meet the highest demands of an educational treatise.

WILLIAM C. MOREY.

A Short History of Roman Law. By PAUL FREDERIC GIRARD, Professor of Roman Law in the Faculty of Law of the University of Paris. Being the first part of his *Manuel de Droit Romain.* Translated (with the consent of the author and with his special additions and corrections) by Augustus Henry Frazer Lefroy, M.A. (Axon), Barrister-at-Law, Professor of Roman Law and General Jurisprudence in the University of Toronto, and John Home Cameron, M.A., Associate Professor of French in University College, Toronto. (Toronto: Canada Law Book Company. 1906. Pp.vi, 220.)

All teachers of the Roman law and of historical jurisprudence will welcome this English version of the general part of Professor Girard's celebrated *Manuel.* That work, first published in 1895, has already run through several editions, and has been received with marked favor in Europe. Doubtless, it deserves the praise of Dr. Moyle, who in, 1903, pronounced it a "masterly treatise." The *Short History,* in the hands of a critical teacher, will prove a helpful supplementary handbook for a class in the Institutes or in historical jurisprudence. It is, of course, based on an independent investigation of the sources, which are minutely cited in the marginal notes; but it is very conservative, and the element of comparison is almost wholly lacking.

The work opens with an admirable discussion of definitions and general principles. For the modern student, it is wisely insisted, the chief advantage of the study of Roman law consists, neither in the material which it provides for the practical understanding of existing laws, nor in the dialectical training afforded, but rather in its incomparable value as an instrument of historical education. The body of the text comprises four chapters. The first deals with the period of the "Kingship" including the Servian reforms; the second, with the "Republic." In general, much deference is paid to the views of Mommsen. For instance, the German historian's well known conclusions regarding the *concilium plebis* are accepted;